

### **REMARKS**

These remarks are in response to the office action mailed July 5, 2005.

Claims 63-90, 93-94, 97-111, 113-114 and 116-127 have been cancelled without prejudice to Applicants' right to prosecute the canceled subject matter in any divisional, continuation, continuation-in-part or other application. Claim 111 was deemed allowable. However, as noted above, claim 111 has been cancelled. The content of cancelled claim 111 is encompassed by new claims 128 and 129 which are directed to polypeptide sequences of the invention.

New claim 130 has been added. Support for new claim 130 can be found throughout the specification.

No new matter is believed to have been introduced. Applicants respectfully request examination and allowance of the pending claims.

### **Objections Raised in the Advisory Action**

In the Advisory Action mailed January 27, 2006 the Examiner states that previously presented claims 130 and 131, as included in the Reply filed November 2, 2005, were never presented in any previously filed amendment. The Examiner further states that, if entered, the claims would be withdrawn because they claim an invention that is distinct from the invention originally claimed. Finally, the Examiner states that, if entered, claims 130 and 131 would be rejected under 35 U.S.C. 101 for reading on host cells as they naturally exist.

First, in order to expedite allowance of the pending claims, Applicant has removed the previously presented but not entered claims 130 and 1131. Second, even if previously presented claims 130 and 131 were entered and examined, they

should not be subject to a 35 U.S.C. 101 rejection. Applicant notes that previously filed claims 130 and 131 are dependent claims. Accordingly, they necessarily incorporate all the limitations of the claims from which they depend. For example, previously presented claim 130 recites, in part, "An isolated host cell comprising the polypeptide of claim 1128...". This host cell would not "exist in nature" because it includes the "isolated polypeptide" of claim 128." Given that the "isolated" host cell comprises the "isolated" polypeptide of claim 128, including the word "transformed," "recombinant," or "transfected" in front of the term "host cell" would simply be redundant. Applicant submits that USPTO guidelines support this position. For example, the "TC1600 Restriction Training for Examiners" (August 2004) at page 24 provides the "1630/1640/1650 Example 1 - Claim Set." Applicant notes that example claim 5 is to a host cell. Example claim 5 is virtually identical to previously presented claim 130 because it recites an "isolated" host cell that comprises a [nucleic acid] of the independent claim from which it depends. Accordingly, and as recognized by the USPTO, the inclusion of, e.g., "transformed" in example claim 5 would be redundant. The inclusion of "transformed" in previously presented claim 130 is similarly redundant and unnecessary.

#### **REJECTIONS UNDER 35 U.S.C. §112, FIRST AND SECOND PARAGRAPHS**

Claims 63-90, 93, 94, 97-110, and 113-127 stand rejected under 35 U.S.C. §112, first paragraph and/or 35 U.S.C. §112, second paragraph. While Applicants traverse these rejections, Applicants note that the rejected claims have been cancelled. Applicants reserve the right to present the cancelled claims in a


subsequent continuing or divisional application. Accordingly, Applicants request withdrawal of the pending rejections.

In summary, for the reasons set forth herein, Applicants submit that new claims 128-130 clearly and patentably define the invention. Applicants request that the Examiner reconsider the various grounds set forth in the Office Action and allow the claims which are now pending. If the Examiner would like to discuss any of the issues raised in the Office Action, Applicants' representative can be reached at (858) 509-7318. Please charge any additional fees, or make any credits, to Deposit Account No. 02-4800.

Respectfully submitted,

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